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Utah Supreme Court

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Tom Jones; Attorney for Appellant.

Vernon B. Romney; Attorney General; Earl F. Dorius; Assistant Attorney General; Attorneys for Respondent.

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UTAH SUPREME COURT

BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

RAYMOND GUY MURPHY,

Plaintiff-Appellant,

-vs-

SAMUEL W. SMITH, Warden,
Utah State Prison,

Defendant-Respondent.

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Case No. 14356

BRIEF OF RESPONDENT

Appeal from the Judgment of the District

Court of Salt Lake County, Utah

Honorable Marcellus K. Snow, Judge

VERNON B. ROMNEY
Attorney General

EARL F. DORIUS
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

TOM JONES
263 South Second East
Salt Lake City, Utah 84111

Attorney for Appellant

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Case No. 14356

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a judgment and order entered by the Honorable Marcellus K. Snow, Judge of the Third District Court, dismissing with prejudice petitioner-appellant's Petition for Writ of Habeas Corpus as a matter of law on November 2, 1975.

DISPOSITION IN LOWER COURT

The case came on regularly for hearing before the Honorable Marcellus K. Snow, Judge of the Third Judicial District Court, on September 25, 1975. After

hearing, Judge Snow issued an Order denying with prejudice petitioner-appellant's Petition for Writ of Habeas Corpus as a matter of law.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the lower court's judgment and order dismissing appellant's Petition for Writ of Habeas Corpus as a matter of law.

STATEMENT OF FACTS

Appellant Raymond Guy Murphy was charged by Information before the Honorable Bryant H. Croft, District Judge, Third Judicial Court, with the crime of "Murder in the First Degree" in violation of then existing provisions of the Utah Code Annotated (1953).

After a jury trial a verdict of guilty was returned against defendant-appellant, and he was sentenced to a term of life imprisonment on January 29, 1971.

Petitioner-appellant filed a motion for new trial on January 25, 1971, on grounds of jury misconduct and erroneous jury instructions. He subsequently appealed his conviction to the Utah Supreme Court on grounds other than jury misconduct, and that conviction was affirmed on February 4, 1972.

Subsequently petitioner-appellant filed a Petition for Writ of Habeas Corpus in April, 1975, alleging deprivation of a fair trial through jury misconduct. On September 25, 1975, the instant action for Writ of Habeas Corpus was heard before the Honorable Marcellus K. Snow, Judge of the Third Judicial District Court, on defendant-respondent's Motion to Dismiss on several alternative grounds. After said hearing, Judge Snow issued an Order granting respondent's Motion to Dismiss with Prejudice the Petition as a matter of law. No hearing on the merits of said petition was had. From that judgment and order of dismissal, appellant brought a direct appeal.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY DISMISSED APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS SINCE HABEAS CORPUS IS NOT A PROPER REMEDY IN THE INSTANT CASE.

Two sub-points support the dismissal of appellant's position.

A. PETITIONER'S ALLEGATIONS FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

A writ of habeas corpus is an extraordinary writ to be used in limited situations. Rule 65(b)(i)

of the Utah Code Ann. (1973 Amendment) provides:

"Habeas corpus - Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the proper court that any person is unjustly imprisoned or otherwise restrained of his liberty. If the person seeking relief is imprisoned in the penitentiary and asserts that the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or under the Constitution of the State of Utah, or both, then the person seeking such relief shall proceed in accordance with Rule 65B(i)." (Emphasis added).

Generally, relief will not lie except where "there exists no jurisdiction or authority, or where the requirements of the law have been so ignored or distorted that the party is substantially and effectively denied what is included in the term due process of law, or where some other such circumstance exists that it would be wholly unconscionable not to re-examine the conviction." Bryant v. Turner, 19 Utah 2d 284 at 287, 431 P.2d 121 (1968).

Petitioner does not allege any injury falling within the criteria enumerated above. No facts are presented on which to base a finding that:

1. The law was so ignored or distorted as to deny petitioner's rights to due process.

2. There is some other circumstance that would make it unconscionable for the court not to re-examine petitioner's conviction.

The action of the jury members was a discussion of the sentence of the petitioner and did not go to the issue of his innocence or guilt.

In State v. Moore, 183 P.2d 973, 111 Utah 458 (1947), an almost identical form of misconduct existed as alleged by petitioner. There the court upheld a rape conviction despite affidavits of four jurors which stated that the jurors were persuaded to vote for conviction by another juror's statement that the defendant would have to serve only a few months in jail if found guilty with a recommendation of leniency, which jurors make in returning a verdict of conviction. Nevertheless, such affidavits did not establish defendant's right to a new trial for misconduct of jury preventing a fair and impartial trial.

"The affidavits show no coercion, nor tactics which might have stripped any juror of his ability to act in accordance with his honest convictions." Moore, supra, at 978.

Thus, petitioner in the instant case similarly fails to state a claim of action upon which relief can be granted.

The court in State v. Athorn, 46 N.J. 247, 216 A.2d 369 (1966), very ably discusses the issue before this court. It says:

"If verdicts could be easily set aside as a result of an investigation into secret jury deliberation, dis-appointed litigants would be encouraged to tamper with jurors, to harrass them and to employ fraudulent practices in an effort to induce them to repudiate their decisions. Moreover, an open invitation would be extended to any disgruntled juror who might choose to destroy a verdict to which he had previously assented.

The secrecy surrounding jury deliberations is necessary not only to prevent the unsettling of verdicts after they have been recorded, but also as an aid to the deliberative process itself. Each juror should be encouraged to state his thoughts freely, good or bad, so that they may be weighed by the other jurors." (Emphasis added).

Therefore, only in the most compelling circumstances, involving the substantial rights of the defendant, should a juror be allowed to impeach his own verdict.

Chief Justice Crockett announced in Brown v. Turner, 21 Utah 2d 964, 440 P.2d 968 at 970 (1968):

"When a person has been duly convicted of a crime it is not the purpose of the law nor the proper function of the courts, to be hypercritical in scrutinizing proceedings in an effort to discover

some basis for relieving him from the penalty the law demands and the possibility of rehabilitation because of some technical defect or irregularity which had no actual adverse effect upon his rights or the outcome of the proceedings."

Without a showing that there was a substantial denial of due process, or that an unconscionable result would occur, habeas corpus relief does not lie. Respondents have established that such jury conversations as alleged by petitioner simply do not meet these requirements.

B. PETITIONER HAS MADE NO SHOWING OF PREJUDICE RESULTING FROM THE ALLEGED MISCONDUCT OF THE JURY.

Rule 61 of the Utah Rules of Civil Procedure states Utah's rule of harmless error. Judgments are not reversible unless it can be shown that prejudice has resulted from the alleged error, and that there has been a substantial denial of due process. Odgen Commission Co. v. Campbell, 66 Utah 563, 244 Pac.

1029. Judgment cannot be reversed on harmless error.

No evidence has been offered that indicates that acceptable trial proceedings were violated. Juror Denny's statement does not establish the blatant jury misconduct required before prejudice or due process denial result. Petitioner therefore has not met his burden. As this court held in Brown v. Turner, 21 Utah

2d 964, 440 P.2d 468 (1968):

"If the established rules of procedure are followed they assure ample protection of the rights of one who is accused of crime. After this is done and a judgment has been rendered all presumptions favor validity and the burden of showing to the contrary is upon one who attempts to upset it." Brown at 99.

The discussion of the jurors which is the basis for petitioner's allegations had no bearing on the issue of guilt or innocence. If the jurors did not believe petitioner was guilty of first degree murder, they could have found him guilty of a lesser included offense, which would have made possible a shorter prison sentence. Therefore, no denial of petitioner's rights ensued. The harmless error rule should apply.

POINT II

THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS PRIOR TO A HEARING ON THE MERITS.

When relief prayed for under a Writ of Habeas Corpus cannot be granted as a matter of law, the court need not hold a full evidentiary hearing. Even if, arguendo, petitioner's allegations are true, dismissal of his petition was inevitable for reasons set out in Point I; namely, that those jury activities did not

deny petitioner a fair trial and do not at law constitute jury misconduct. Nevertheless, the District Court did allow petitioner to testify in his own behalf before issuing its ruling.

Respondent acknowledges that certain types of blatant jury misconduct, i.e. bribery, threats, verdict by lot, undoubtedly deny a defendant a fair trial. In those circumstances a new trial shall be granted. The jury deliberations petitioner complains of do not meet the statutory requirements of misconduct, whose parameters have been determined by case law. See Brown v. Turner, 21 Utah 2d 964, 440 P.2d 468 (1968), State v. Moore, 111 Utah 458, 183 P.2d 973 (1947), Gee v. Smith, 541 P.2d 6 (1975). Therefore, the District Court properly refused to hold a full hearing.

CONCLUSION

The trial court made no error in dismissing with prejudice appellant's Petition for a Writ of Habeas Corpus prior to a full hearing. This court should affirm that judgment and order.

RESPECTFULLY SUBMITTED,

VERNON B. ROMNEY
Attorney General

EARL F. DORIUS
Assistant Attorney General

Attorneys for Respondent